

## **RRC STAFF OPINION**

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: COMMISSION FOR PUBLIC HEALTH

RULE CITATION: 10A NCAC 43D .0708

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*In Item (36), page 5 it is unclear what is meant by "vendor location" in lines 13, 14 and 17 and "store" in line 18.*

*This rule refers to a "change in location" as triggering termination of the WIC Vendor Agreement. But it also adds the proviso that the change in location must be more than three miles from the vendor's previous location. This seems to indicate that if the vendor changes locations and the change is less than three miles, the vendor's agreement is not terminated.*

*It now becomes important to note that the rule appears to be referring to the "vendor[s]" location rather than the "store[s]" location although this is not explicit. In the definitions rule 43D .0202 "store" means "the physical building located at a permanent and fixed site" (emphasis added).*

*That leaves open the possibility that this rule could (and should?) be interpreted to mean that if a vendor, whose store is subject to a disqualification period, changes locations and the change is less than three miles, that the vendor's agreement remains in place, the original store is still subject to the disqualification, while the new location is not subject to any disqualification.*

*If that illogical outcome is the intent, then that should be made abundantly clear. If that is not the intent, then the rule is unclear.*